

Subpart G—Taking of Marine Mammals Incidental to U.S. Air Force Launches, Aircraft and Helicopter Operations, and Harbor Activities Related to Launch Vehicles From Vandenberg Air Force Base (VAFB), California

SOURCE: 79 FR 10026, Feb. 24, 2014, unless otherwise noted.

§ 217.60 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the 30th Space Wing, United States Air Force (USAF), at Vandenberg Air Force Base and those persons it authorizes to conduct activities on its behalf for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occurs incidental to:

(1) Launching up to 15 space and each year from Vandenberg Air Force Base, for a total of up to 75 missiles over the 5-year period of these regulations,

(2) Launching up to 35 rockets each year from Vandenberg Air Force Base, for a total of up to 175 rocket launches over the 5-year period of these regulations,

(3) Aircraft flight test operations,

(4) Helicopter operations from Vandenberg Air Force Base, and

(5) *Delta Mariner* (or a similar vessel) operations, cargo unloading activities, and harbor maintenance dredging.

(b) The taking of marine mammals by the USAF may be authorized in a Letter of Authorization only if it occurs from the space launch complexes, launch facilities, and test pads on north and south Vandenberg Air Force Base and the Vandenberg Air Force Base harbor on South Base.

§ 217.61 Effective dates.

Regulations in this subpart are effective from March 26, 2014 through March 26, 2019.

§ 217.62 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 and 217.60 of this chapter, the Holder of the Letter of Authorization (herein after the

USAF) may incidentally, but not intentionally, take marine mammals by harassment, within the area described in § 217.60(b), provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate Letter of Authorization.

(b) The activities identified in § 217.60(a) must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals and their habitat.

(c) The incidental take of marine mammals under the activities identified in § 217.60(a) of this chapter is limited to the indicated number of Level B harassment takes on an annual basis of the following species:

(1) Harbor seals (*Phoca vitulina*)—31,161;

(2) California sea lions (*Zalophus californianus*)—465,129;

(3) Northern elephant seals (*Mirounga angustirostris*)—80,024;

(4) Northern fur seals (*Callorhinus ursinus*)—62,500; and

(5) Steller sea lions (*Eumetopias jubatus*)—1,824.

§ 217.63 Prohibitions.

Notwithstanding takings contemplated in § 217.62(c) and authorized by a Letter of Authorization issued under §§ 216.106 and 217.66 of this chapter, no person in connection with the activities described in § 217.60 may:

(a) Take any marine mammal not specified in § 217.62(c);

(b) Take any marine mammal specified in § 217.62(c) other than by incidental, unintentional Level B harassment;

(c) Take a marine mammal specified in § 217.62(c) if NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a Letter of Authorization issued under §§ 216.106 and 217.66 of this chapter.

§ 217.64 Mitigation.

(a) When conducting the activities identified in § 217.60(a), the mitigation measures contained in the Letter of Authorization issued under §§ 216.106

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and 217.66 of this chapter must be implemented. These mitigation measures include (but are not limited to):

(1) All aircraft and helicopter flight paths must maintain a minimum distance of 1,000 ft (305 m) from recognized seal haul-outs and rookeries (e.g., Point Sal, Purisima Point, Rocky Point), except in emergencies or for real-time security incidents (e.g., search-and-rescue, fire-fighting), which may require approaching pinniped haul-outs and rookeries closer than 1,000 ft (305 m).

(2) For missile and rocket launches, holders of Letters of Authorization must avoid, whenever possible, launches during the harbor seal pupping season of March through June, unless constrained by factors including, but not limited to, human safety, national security, or for space vehicle launch trajectory necessary to meet mission objectives.

(3) Vandenberg Air Force Base must avoid, whenever possible, launches which are predicted to produce a sonic boom on the Northern Channel Islands during harbor seal, elephant seal, California sea lion, and northern fur seal pupping seasons of March through June.

(4) If post-launch surveys determine that an injurious or lethal take of a marine mammal has occurred, the launch procedure and the monitoring methods must be reviewed, in cooperation with the National Marine Fisheries Service (NMFS), and appropriate changes must be made through modification to a Letter of Authorization, prior to conducting the next launch under that Letter of Authorization.

(5) *Delta Mariner* (or a similar vessel) operations, cargo unloading, and harbor maintenance dredging measures:

(i) If activities occur during nighttime hours, turn on lighting equipment before dusk. Lights must remain on for the entire night to avoid startling pinnipeds.

(ii) Initiate operations before dusk.

(iii) Keep construction noises at a constant level (i.e., not interrupted by periods of quiet in excess of 30 minutes) while pinnipeds are present.

(iv) Initiate a gradual start-up of activities to ensure a gradual increase in noise levels if activities cease for

longer than 30 minutes and pinnipeds are in the area.

(v) Conduct visual monitor, by a qualified observer, of the harbor seals on the beach adjacent to the harbor and on rocks for any flushing or other behaviors as a result of activities described in §217.60(a).

(vi) The *Delta Mariner* and accompanying vessels must enter the harbor only when the tide is too high for harbor seals to haul-out on the rocks; reducing speed to 1.5 to 2 knots (1.5–2 nm/hr; 2.8–3.7 km/hr) once the vessel is within 3 mi (4.83 km) of the harbor. The vessel must enter the harbor stern first, approaching the wharf and moorings at less than 0.75 knot (1.4 km/hr).

(vii) Explore alternate dredge methods and introduce quieter techniques and equipment as they become available.

(6) Additional mitigation measures as contained in a Letter of Authorization.

(b) [Reserved]

§217.65 Requirements for monitoring and reporting.

(a) Unless specified otherwise in the Letter of Authorization, the USAF must notify the Administrator, West Coast Region, NMFS, by letter or telephone, at least 2 weeks prior to activities possibly involving the taking of marine mammals. If the authorized activity identified in §217.60(a) is thought to have resulted in the mortality or injury of any marine mammals or in any take of marine mammals not identified in §217.62(c), then the USAF must notify the Director, Office of Protected Resources, NMFS, or designee, by telephone (301–427–8401), within 48 hours of the discovery of the injured or dead animal.

(b) To conduct monitoring of launch activities, the USAF must designate qualified, on-site individuals approved in advance by NMFS, as specified in the Letter of Authorization, to:

(1) Conduct observations on pinniped activity in the vicinity of the rookery nearest the launch platform or, in the absence of pinnipeds at that location, at another nearby haul-out, for at least 72 hours prior to any planned launch occurring during the harbor seal pupping season (1 March through 30 June) and continue for a period of time